

IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF TENNESSEE
EASTERN DIVISION

FLINT COX,

Plaintiff,

v.

No. 1:18-cv-01196-JDB-jay

ERIE INSURANCE EXCHANGE,

Defendant.

ORDER ADOPTING REPORT AND RECOMMENDATION, AND DENYING
DEFENDANT'S MOTION FOR SANCTIONS AND PLAINTIFF'S REQUEST FOR
ATTORNEYS' FEES¹

Pending before the Court is the motion of the Defendant, Erie Insurance Exchange, for the imposition of sanctions against the Plaintiff, Flint Cox, for failure to comply with the scheduling order. (Docket Entry ("D.E.") 23.) Pursuant to an order of reference (D.E. 24), United States Magistrate Judge Jon A. York, on June 19, 2019, recommended that the motion be denied (D.E. 26). The magistrate judge also recommended that the request for attorneys' fees set forth in Plaintiff's response to the motion for sanctions be denied. No objections to the report and recommendation have been filed, and the time for such objections has expired. Having reviewed the report and recommendation and the entire record, the Court hereby ADOPTS the report and

¹There is not a pending motion on the Court's docket relative to this request, as it was included in Plaintiff's response to the motion for sanctions. (Docket Entry 25 at PageID 68.) Counsel is admonished that it is not proper to include a separate request for relief in a response. *See Marsh v. Rhodes*, Civil Action No. 14-12947, 2016 WL 11469776, at *1 n.1 (E.D. Mich. Apr. 21, 2016) ("it is not proper to file a separate motion within a response brief"), *report & recommendation adopted* 2016 WL 3563561 (E.D. Mich. July 1, 2016), *appeal dismissed*, No. 16-2053 (6th Cir. Sept. 1, 2016). Rather, counsel should have filed a motion for attorneys' fees separate from its response to the Defendant's motion for sanctions.

recommendation, and DENIES the Defendant's motion for sanctions and the Plaintiff's request for attorneys' fees.

IT IS SO ORDERED this 10th day of July 2019.

s/ J. DANIEL BREEN
UNITED STATES DISTRICT JUDGE